IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-5118.

GEORGE H. HOHLWEILER, ESQUIRE, Administrator of the Estate of ELFORD W. RICHARDSON, Deceased,
Petitioner,

v.

PENN-CENTRAL TRANSPORTATION COMPANY

and

THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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QUESTIONS PRESENTED.

1. Should this Court grant certiorari to review the trial court's extensive findings of fact and conclusions of law in favor of respondents under well settled principles of law, after a trial without a jury?

2. Did not the trial court properly conclude that petitioner's claim under the Federal Employers' Liability Act was barred by a valid and binding release and that petitioner had failed to prove his charges of fraud, conspiracy, and discrimination under the Railway Labor Act?

STATEMENT OF THE CASE.

This case was tried before District Judge A. Leon Higginbotham sitting without a jury in the United States District Court for the Eastern District of Pennsylvania. On January 23, 1969, Judge Higginbotham issued a fourteen-page opinion, setting forth extensive findings of fact and conclusions of law, entering judgment in favor of both defendants. In its opinion, the court held, consistent with the principles enunciated in *Callen v. Pennsylvania Railroad Company*, 332 U. S. 625 (1948), that plaintiff failed to sustain his burden of proving the invalidity of a settlement agreement with the Railroad (A. 10, 15-16). Plaintiff's claims of fraud, conspiracy, and discrimination under the Railway Labor Act were likewise held to be unsupported by the evidence (A. 14-15).

On February 16, 1971, the United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court per curiam.

ARGUMENT.

The Petition Raises No Question Which Merits Review by This Court.

This case does not justify the grant of a writ of certiorari, *Supreme Court Rule 19(b)*. This is a case in which a plaintiff simply failed to sustain his burden of proof in setting aside a valid and binding release and failed to prove his charges of fraud, conspiracy, and discrimination under the Railway Labor Act. Petitioner's appeal was fully considered by an able Court of Appeals and resolved against him. That court, upon reviewing the record, concluded that the trial court "made extensive findings of fact which amply support this judgment." Its judgment need not and should not be reviewed by this court.

Having failed to satisfy either of the courts below, petitioner now claims that this Court should exercise its discretionary certiorari jurisdiction because the decision of the Court of Appeals conflicts with the recent decision of this Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation et al.*, 39 U. S. L. Wk. 4506 (1971). There is no conflict. The holding below was in no sense contrary to or in conflict with this Court's decision in *Blonder-Tongue*, in which the mutuality of estoppel doctrine was held applicable to the particular facts of a patent infringement case. The mutuality of estoppel doctrine is inapplicable to this case because the causes of action and issues which were fully tried in this case had never been previously litigated.

The weakness of petitioner's case is further demonstrated by his gratuitous and vindictive attack upon the integrity of the courts below. Utterly unsupported by any vestige of fact, it deserves the scorn of silent rejection reserved for unsuccessful claimants and their frustrated advocates.

CONCLUSION.

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Of Counsel:
DECHERT, PRICE & RHOADS.